



June 27, 2023

**VIA ECF**

The Honorable Sarah Netburn  
S.D.N.Y. Thurgood Marshall Courthouse  
New York, NY 10007

Re: *Lynne Freeman v. Tracy Deebs-Elkenaney et. al.*, 1:22 Civ 02435 (LLS)(SN)

Dear Judge Netburn:

Defendants oppose Plaintiff's letter seeking recusal (ECF No. 238). None of the purported conflicts identified in Plaintiff's letter would prompt a reasonable person to question Your Honor's impartiality. *See, e.g., Chevron Corp. v. Donziger*, 783 F. Supp. 2d 713, 721 (S.D.N.Y. 2011) ("the test of impartiality is what a reasonable person, knowing and understanding all the facts and circumstances, would believe"). Moreover, nearly all the alleged conflicts involve Your Honor's husband John Cuti, who was a partner at the same firm as Prospect Agency's counsel over **a decade ago**. The federal recusal statute specifically addresses when recusal is required based on a judge's spouse's activities, and none of the statutory circumstances is present here. *See* 28 U.S.C. § 455(b)(5) (recusal required when the spouse is (1) a party, or an officer/director/trustee of a party; (2) a lawyer in the case; (3) is known to have an interest that could be substantially affected by the case outcome; or (4) is likely to be a material witness).

Additionally, "[a] motion for recusal under Section 455(a) must be made 'as soon as the facts on which it is premised are known to the parties.'" *Donziger*, 783 F. Supp. 2d at 721 (citation omitted). Mr. Koonce disclosed the issue of Mr. Cuti's firm serving as conflicts counsel in a different case back in **July 2022**. It is unclear why Plaintiff waited nearly a year to seek recusal, and why this is even necessary given that the substantive and procedural issues Plaintiff appears most concerned about are now before Judge Stanton.

Thank you for your attention to this issue.

Respectfully submitted,

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